Archive of Significant Judicial Decisions Interpreting the FOIA through 2002

Contents

A. Defining the Agencies and Records Subject to the FOIA
B. Delays and Expedited Processing
C. Agency Obligations to Search for Requested Records
D. Agency Obligations to Prove Exemption Claims
E. Exemptions
1. Exemption 1: Classified Information
2. Exemption 2: Internal Personnel Rules
3. Exemption 3: Withholding Specifically Authorized By Another Statute
4. Exemption 4: Trade Secrets and Confidential Commercial Information
5. Exemption 5: Internal Government Memoranda Protected By A Privilege
6. Exemption 6: Personal Privacy
7. Exemption 7: Law Enforcement Records
F. Fees & Attorneys Fees
G. Reverse FOIA

A. Defining the Agencies and Records Subject to the FOIA

Forsham v. Harris, 445 U.S. 169 (1980) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/445/169.html)

> Records created and held by a private agency that receives federal grants, are not "agency records." A federal agency mus either create or obtain records as a prerequisite to it becoming an "agency record," which did not occur in this case

Kissinger v. Reporters Committee, 445 U.S. 136 (1980) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/445/136.html)

> FOIA does not provide a private cause of action to require agencies to recover records that have been removed by agency officials. Therefore, transcripts made for the Secretary of State were not improperly withheld under FOIA because the documents had been removed from the possession of the Department of State before the FOIA request was submitted. Transcripts made while Henry Kissinger was the National Security Advisor were also not subject to the FOIA because the National Security Advisor is part of the personal presidential staff, and the records of the President's personal advisors are not subject to FOIA.

Department of Justice v. Tax Analysts, 492 U.S. 136 (1989) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/492/136.html)

> Records that are created or received by a federal agency are "agency records" subject to the FOIA. Even if the records are available to the requester through other means, an agency is obligated to release the records in response to FOIA requests

where the records do not fall under any of the nine FOIA exemptions. FOIA provides that federal courts have jurisdiction to compel disclosure where an agency has (1) improperly (2) withheld (3) agency records. All three requirements were satisfie in this case, in which the requester sought from the Department of Justice copies of district court decisions in tax cases litigated by the Department.

Armstrong v. Executive Office of the President, 90 F.3d 553 (D.C. Cir. 1996) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/DC/955057a.html)

The records of the National Security Council are not subject to the FOIA because the NSC is not an agency. Because of its proximity to the President, the NSC is among the entities in the Executive Office of the President that is not subject to the FOIA.

Burka v. HHS. 87 F.3d 508 (D.C. Cir. 1996) (http://caselaw.findlaw.com/us-dc-circuit/1396667.html)

This circuit has identified four factors relevant to a determination of whether an agency exercises sufficient control over a document to render it an "agency record": "(1) the intent of the document's creator to retain or relinquish control over the records; (2) the ability of the agency to use and dispose of the record as it sees fit; (3) the extent to which agency personnel have read or relied upon the document; and (4) the degree to which the document was integrated into the agency's record system or files."

B. Delays and Expedited Processing

Open American v. Watergate Special Prosecution (D.C. Cir. 1976) (https://www.citizen.org/our-work/litigation/articles/significant-foia-decisions-open-american-v-watergate-special#)

Seminal decision addressing enforcement of FOIA response deadlines when agency processing is delayed due to backlog. Defines "extraordinary circumstances" that warrant a judicial stay of suit to compel agency to release records, and defines the agency's obligation to process requests with due diligence.

Fiduccia v.United States Department of Justice (http://caselaw.findlaw.com/us-9th-circuit/1261291.html)

To warrant a stay of litigation challenging the agency's failure to respond to a FOIA request, the district court must be able t find that the circumstances delaying processing were "exceptional" rather than ordinary and expected, and that the agency exercised "due diligence." The agency's own affidavits show that the circumstances leading it to seek a stay were unexceptional. The affidavits show a slight upward creep in the caseload that the agency attributes to "employee cut backs, and repeated rejection of its budget requests within the executive branch. In the absence of the "exceptional circumstances required by the statute, it is erroneous for the district court to grant a stay pursuant to Open America v. Watergate Special Prosecution Force, 547 F.2d 605 (D.C. Cir. 1976).

Al Fayed v. CIA, 254 F.3d 300 (D.C. Cir. 2001) (http://caselaw.findlaw.com/us-dc-circuit/1004593.html)

In determining whether a request is entitled to expedited processing based on "urgency to inform" under the 1996 FOIA Amendments, courts must consider at least three factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity. Courts should review agency decisions denying expedited processing de novo, rather than defer to agency determinations.

C. Agency Obligations to Search for Requested Records

McGehee v. C.I.A., 697 F.2d 1095 (D.C. Cir. 1983) (https://www.citizen.org/our-work/litigation/articles/significant-foia-decisions-mcgehee-v-ciadc-cir-1983)

The court held that an agency may not impose a "date-of-request cut-off" on searches for records under the FOIA unless th agency notifies the requester that it is imposing the cut-off and can demonstrate that the cut-off is consistent with the agency's obligation to conduct a reasonable search. The court identified alternative procedures for conducting a more complete search and stated that, to justify a date of request cut-off, the agency must show that such procedures were not feasible. The court rejected the argument that records created after the date of the request are not subject to the FOIA as a matter of law.

The court also rejected the argument that when an agency receives a FOIA request for records that the agency received from another agency, the agency may refer the requester to the agency that originated the records instead of responding. Instead, the court stated that when an agency receives a FOIA request for "agency records" in its possession, it must take responsibility for processing the request and it cannot simply refuse to act on the ground that the documents originated elsewhere. Agency procedures for referring requests to other agencies may also constitute improper withholding under the FOIA if they result in burdens on requesters or delays that are not offset by benefits to requesters.

Public Citizen v. Department of State, 276 F.3d 634 (D.C.Cir. 2002) (http://caselaw.findlaw.com/us-dc-circuit/1332933.html)

Agency may not impose a time of request cut-off rule unless it can demonstrate that a later cutoff, such as the date of searc would result in an administrative nightmare. Agency is not required to publish an across-the-board cut-off for notice an comment under the APA.

Campbell v. U.S. Department of Justice, 164 F.3d 20 (D.C. Cir.1998) (http://caselaw.findlaw.com/us-dc-circuit/1179584.html)

Where agency's search for records is challenged, the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested. If the summary judgment evidence leaves substantial doubt as to the sufficiency of the search, summary judgment for the agency is not proper.

An agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested. The court evaluates the reasonableness of an agency's decision to search particular record systems search based on what the agency knew at the conclusion of the search rather than what the agency speculated at the inception of the search. Where the documents uncovered by the agency in the course of a search indicates that records may be in reco systems that agency did not plan to search when the search began, the agency must expand the scope of its search.

Valencia-Lucena v. United States Coast Guard, 180 F. 3d 321 (D.C. Cir. 1999) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/DC/985041a.html)

It was inappropriate for the court to enter summary judgment accepting the agency's claim that its search for records under the FOIA was adequate where the evidence showed that the agency had identified an off-site storage facility for federal records as a likely place where the requested documents might be located, but the agency did not search the facility and di not contact the person last known to have possession of the documents requested. It is well-settled that if an agency has reason to know that certain places may contain responsive documents, it is obligated under FOIA to search barring an undu burden.

D. Agency Obligations to Prove Exemption Claims

Vaughn v. Rosen, 484 F.2d 820, 157 U.S.App.D.C. 340 (D.C. Cir. 1973) (https://www.citizen.org/our-work/litigation/articles/vaughn-v-rosen-484-f2d-820-157-usappdc-340-dc-cir-1973)

> In order to substantiate agency exemption claims for judicial review, an agency must provide a "Vaughn Index" that identifies each document withheld, states the statutory exemption claimed, and explains how disclosure would damage the interests protected by the claimed exemption.

Halpern v. FBI, 181 F. 3d 279 (2d Cir. 1999) (http://caselaw.findlaw.com/us-2nd-circuit/1054783.html)

> An agency must submit documentation that meets the following two requirements: (i) the documentation must include "a relatively detailed analysis of the withheld material in manageable segments" without resort to "conclusory and generalized allegations of exemptions; (ii) the documentation must also provide "an indexing system [that] would subdivide the [withheld document under consideration into manageable parts cross-referenced to the relevant portion of the Government's justification. The agency's affidavit is inadequate if it gives no contextual description either of the documents subject to redaction or of the specific redactions made to the various documents. The affidavit is also inadequate if it fails to provide th kind of fact-specific justification that either would permit appellant to contest the affidavit in adversarial fashion, or would permit a reviewing court to engage in effective de novo review of the FBI's redactions. The good faith presumption that attaches to agency affidavits only applies when accompanied by reasonably detailed explanations of why material was withheld.

E. Exemptions

Exemption 1: Classified Information

The FOIA “does not apply to matters that are . . .(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;”

Environmental Protection Agency v. Mink, 410 U.S. 73 (1973) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=US&vol=410&invol=73)

> The language of Exemption 1 indicates that Congress intended for determinations made pursuant to an executive order to control whether the documents should be disclosed, and did not make the soundness of executive security classifications subject to judicial review. The language of Exemption 1 also shows that the FOIA does not authorize or permit in camera inspection of a contested document so that the court may separate the secret from the supposedly nonsecret and order disclosure of the latter. [In response to this decision, in 1974, the FOIA was amended to add language specifically discussin the ability of courts to examine records in camera.]

Exemption 2: Internal Personnel Rules

The FOIA “does not apply to matters that are . . related solely to the internal personnel rules and practices of an agency;”

Department of Air Force v. Rose, 425 U.S. 352 (1976) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/425/352.html)

> Exemption 2 does not exempt disclosure of requested case summaries because they were public information and had more than internal importance. Court ordered the district court to conduct an in camera inspection of documents to determine whether disclosure was an unwarranted invasion of privacy and whether privacy could be protected through redaction.

Exemption 3: Withholding Specifically Authorized By Another Statute

The FOIA "does not apply to matters that are . . .(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;"

FAA Administrator v. Robertson, 422 U.S. 255 (1975) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/422/255.html)

> The Court held that Exemption 3 authorized withholding records pursuant to a statute that allowed the FAA Administrator to withhold information in a report where, in his judgment, disclosure would adversely affect the interest of a party that objecte to disclosure and disclosure is not required in the public's interest. In response to this decision, Congress amended Exemption 3 to provide that, to authorize withholding under the FOIA, a statute must either (A) require that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establish particular criteria for withholding or refer to particular types of matters to be withheld.

Consumer Product Safety Common v. GTE Sylvania, 447 U.S. 102 (1980) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/447/102.html)

> The Consumer Product Safety Commission may not release records under the FOIA without first complying with section 6(b (1) of the Consumer Product Safety Act. The Court found that Section 6(b)(1) provided a basis for withholding material unde Exemption 3 of the FOIA because the statutory language set forth "sufficiently definite standards" for the considerations tha the Commission must weigh when disclosing product information, and because the statute did not grant the Commission broad discretion to refuse to comply with FOIA.

Church of Scientology of California v. IRS, 484 U.S. 9 (1987) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/484/9.html)

> Section 6103(a) of the Internal Revenue Code exempts tax returns and "return information" from disclosure under the FOIA even if the IRS files can be redacted to delete those parts which would identify a particular taxpayer.

CIA v. Sims, 471 U.S. 159 (1985) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/471/159.html)

> Information covered by section 102(d)(3) of the National Security Act of 1947 is exempt from disclosure under FOIA's Exemption 3. The Director of Central Intelligence has broad authority to protect individuals who qualify as "intelligence sources" and those who have been promised confidentiality provided they are engaged in aiding the CIA fulfill its statutory obligation with respect to foreign intelligence.

United States Dep't of Justice v. Julian, 486 U.S. 1 (1988) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/486/1.html)

> Subjects of presentence reports were entitled to view the reports under the FOIA. The presentence reports are not exempt under Exemption 3 or 5.

Exemption 4: Trade Secrets and Confidential Commercial Information

The FOIA "does not apply to matters that are . . .trade secrets and commercial or financial information obtained from a person ar privileged or confidential; "

Public Citizen Health Research Group v. FDA, 185 F.3d 898 (D.C. Cir. 1999).
(http://login.findlaw.com/scripts/case_login?dest=http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl

> Information that a person is required to submit to the government may be withheld under Exemption 4 only if its disclosure i likely either (1) to impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. Exemption 4 does not permit the requester to argue that the competitive harm from disclosure is outweighed by the public interest served by disclosure, such as the interest in disclosure of information that would safeguard the health of human trial participants.
>
> In order to obtain the release of information withheld under Exemption 4, the requester need not show that the submitter of the information would suffer no competitive harm from the release of this information; it need only show that the agency and the submitter have not met their burden of showing that the submitter would suffer substantial competitive harm from the disclosure.

Niagara Mohawk Power v United States Department of Energy, 169 F.3d 16 (D.C. Cir. 1999)
(http://caselaw.findlaw.com/us-dc-circuit/1020493.html)

> In *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974), the District of Columbia Circuit adopted a narrow reading of the word "confidential," saying that information was confidential within the meaning of Exemption 4 only if its disclosure was likely to (1) impair the government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. For the government to preclude disclosure based on a competitive injury claim, it must prove that the submitters (1) actually fac competition, and (2) substantial competitive injury would likely result from disclosure. The agency fails to meet this burden where it only provides affidavits with conclusory and generalized assertions.

Exemption 5: Internal Government Memoranda Protected By A Privilege

The FOIA “does not apply to matters that are. . . inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;”

Environmental Protection Agency v. Mink, 410 U.S. 73 (1973) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=US&vol=410&invol=73)

> Exemption 5 requires different treatment for materials reflecting deliberative or policy-making processes on the one hand, and purely factual, investigative matters on the other. Factual material contained in deliberative memoranda is not exempt from disclosure if the factual material is severable. In reviewing agency determinations under this exemption in camera inspection will be necessary and appropriate in some circumstances. But in camera inspection is not automatic; an agency should be given the opportunity, by means of detailed affidavits or oral testimony that particular documents are purely advisory and contain no separable, factual information.

NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=US&vol=421&invol=132)

> The Supreme Court affirmed a ruling that memoranda, which explained decisions not to file an unfair labor practice complaint, were "final opinions" and subsequently outside the scope of Exemption 5. Memoranda, which explained decision to file a complaint and litigate, are covered by Exemption 5 as attorney work-product. The documents incorporated by reference in nonexempt Advice and Appeals Memoranda lose any exemption they might previously have held as "intra-agency" memoranda under Exemption 5. Finally, if an agency chooses expressly to adopt or incorporate by reference an intra-agency memorandum previously covered by Exemption 5 in what would otherwise be a final opinion, that memorandu may be withheld only on the ground that it is covered by some exemption other than Exemption 5.

Renegotiation Board v. Grumman Aircraft, 421 U.S. 168 (1975) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/421/168.html)

> Reports that are not final opinions may be exempt from disclosure under FOIA's Exemption 5. The reports in this case were prepared prior to the Board's decision and were used in its deliberations.

Federal Open Market Committee v. Merrill, 443 U.S. 340 (1979) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/443/340.html)

> The practice of withholding monetary policy directives was held not to be a violation of Exemption 5 by the Court. Exemption 5 incorporated a qualified privilege for confidential commercial information because it related to buying and selling securities on the open market.

Department of the Interior v. Klamath Water Users Protective Association, 121 S. Ct. 1060 (2001) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/99-1871.html)

> Documents concerning communications regarding water rights between the Department of the Interior's Bureau of Reclamation and the Klamath and other Native American Tribes are not exempt from disclosure under FOIA as "inter-agency or intra-agency memorandums or letters." To be exempt under Exemption 5, the source of a document must be a government agency and it must fall within the ambit of a privilege against discovery under judicial standards that would govern litigation against the agency that holds the document

State of Maine v. Department of the Interior (http://caselaw.findlaw.com/us-1st-circuit/1447339.html)

> Exemption 5 allows government to withhold documents based on attorney client and work product privileges. Although government need not prove that litigation was the primary purpose of document to establish work product privilege, records routinely created are not protected by the privilege. District court may properly order release of records where government fails to prove applicability of privilege on summary judgment and is not required to give agency opportunity to cure defects in its proof.

Tax Analysts v. IRS, 294 F.3d 71 (D.C. Cir. 2002) (http://login.findlaw.com/scripts/case_login?dest=http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl)

> Under the FOIA, "working law" must be disclosed whether or not those who use the working law make the final decisions about program implementation. Memorandum to IRS program managers that represent final considered legal conclusions cannot be withheld based on deliberative process privilege because they constitute working law.

Carter v. United States Dep't of the Census, 307 F.3d 1084 (9th Cir. 2002). (https://www.citizen.org/sites/default/files/0235161p.pdf)

> Adjusted Census data from the 2000 Census may not be withheld under Exemption 5 because the data are neither predecisional nor deliberative.

Exemption 6: Personal Privacy

The FOIA “does not apply to matters that are . . . personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;”

Department of State v. Washington Post Co., 456 U.S. 595 (1982) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/456/595.html)

Citizenship information is exempt from disclosure under FOIA's Exemption 6. Congress intended "similar files" to have a broad meaning and include information like citizenship information.

Dep't of Air Force v. Rose, 425 U.S. 352 (1976) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/425/352.html)

Exemption 6 requires a balancing of invasion of personal privacy and public interest in disclosure. Lower court correctly determined that case summaries describing disciplinary action may be subject to disclosure. Court ordered the district cour to conduct an in camera inspection of documents to determine whether disclosure was an unwarranted invasion of privacy and whether privacy could be protected through redaction.

Department of State v. Ray, 502 U.S. 164 (1991) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/502/164.html)

Disclosure of unredacted interview reports would constitute a clearly unwarranted invasion of the interviewees' privacy. The public interest had been served by the release of redacted interview reports.

United States Department of Defense v. FLRA, 510 U.S. 487 (1994) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/u10431.html)

Privacy interest of employees in preventing disclosure of their addresses to their collective-bargaining representatives outweighs any public interest in disclosure, so disclosure is clearly unwarranted under Exemption 6.

Reporters Committee for Freedom of the Press v.DOJ, 489 U.S. 749 (1989), demonstrates that three principles govern Exemption 6 determinations (1) in evaluating whether a request for information lies within the scope of an exemption that bars disclosure when it would amount to an unwarranted invasion of privacy, a court must balance the public interest in disclosure against the interest Congress intended the exemption to protect; (2) the only relevant public interest to be weighed in this balance is the extent to which disclosure would serve FOIA's core purpose of contributing significantly to public understanding of the Government's operations or activities; and (3) whether an invasion of privacy is warranted cann turn on the purposes for which the information request is made.

Armstrong v. EOP, 97 F.3d 575 (D.C. Cir. 1996) (http://caselaw.findlaw.com/us-dc-circuit/1372038.html)

The scope of a privacy interest under Exemption 6 will always be dependent on the context in which it has been asserted. Unlike Exemption 7(C), which may only be invoked to withhold law enforcement records, Exemption 6 claims can be made for information pertaining to a wide range of activities. For each of these categories of information, the privacy interest implicated may be very different. Consequently, a categorical rule forbidding disclosure of the names of lower-level law enforcement agents in all activities is invalid.

Lepelletier v.FDIC, 164 F.3d 37 (D.C. Cir. 1999) (http://caselaw.findlaw.com/us-dc-circuit/1312392.html)

FOIA analysis under Exemption 6 must include consideration of any interest the individual might have in the release of the information, particularly when the individuals whose privacy would be protected by withholding the records are likely unawa of the information in the records that could benefit them.

Nat'l Ass'n Of Home Builders v. Norton, 309 F.3d 26 (D.C. Cir. 2002) (http://caselaw.findlaw.com/us-dc-circuit/1114053.html)

> Exemption 6 of the Freedom of Information Act does not apply to site-specific information about the location of an endangered species where disclosure might identify individuals' private property, because public interest in disclosure outweighs the privacy interest. To establish that the release of information contained in government files would result in a clearly unwarranted invasion of privacy, the court first asks whether disclosure would compromise a substantial, as opposed to a de minimis, privacy interest. If a significant privacy interest is at stake, the court then must weigh that interest "against the public interest in the release of the records in order to determine whether, on balance, disclosure would work a clearly unwarranted invasion of personal privacy." The public interest to be weighed against the privacy interest in this balancing test is the extent to which disclosure would serve the core purposes of the FOIA by 'contributing significantly to public understanding of the operations or activities of the government.

Exemption 7: Law Enforcement Records

The FOIA “does not apply to matters that are . . .records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual; ”

NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214 (1978) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/437/214.html)

> The NLRB was not required to produce witness statements because the statements were entitled to be withheld under Exemption 7A. Production of the statements before the hearing would have interfered with the NLRB's case by coercing or intimidating employees into changing their testimony.

FBI v. Abramson, 456 U.S. 615 (1982) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/456/615.html)

> Records originally compiled for law enforcement purposes do not lose their exemption under Exemption 7 when the records are duplicated in a later composition, even if the later composition is for non-law-enforcement purposes.

U.S. Dept. of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/489/749.html)

> Disclosure of the contents of an FBI rap sheet to a third party "could reasonably be expected to constitute an unwarranted invasion of personal privacy" under Exemption 7(C) and is prohibited. When the request sought no official information and only information about a private citizen, the privacy invasion was unwarranted. In such cases, the court must balance the public interest in disclosure against the interest Congress intended the exemption to protect. The Court held that categorica balancing may be appropriate, and individual circumstances disregarded, when a case tips in favor of one of the interests.

John Doe Agency v. John Doe Corp., 493 U.S. 146 (1989) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/493/146.html)

FOIA Exemption 7 may be invoked to prevent the disclosure of documents not originally created for, but later gathered for, law enforcement purposes. Documents need only to have been compiled for law enforcement purposes at the time that the response to the FOIA request must be made.

Department of Justice v. Landano, 508 U.S. 165 (1993) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/508/165.html)

There is no presumption that all FBI sources in a criminal investigation are confidential sources under FOIA's Exemption 7 (D). The source is "confidential" if the source believed the information would only be divulged for law enforcement purposes When certain circumstances characteristically support an inference of confidentiality, the government should be able to clai exemption under Exemption 7(D) without detailing the circumstances surrounding a particular interview. However, the agency is not entitled to a presumption that a source is confidential within the meaning of Exemption 7(D). The agency has the burden to show confidentiality.

Maydak v. United States Department of Justice, 218 F.3d 760 (D.C. Cir. 2000) (http://caselaw.findlaw.com/us-dc-circuit/1471435.htmlhttp://)

The government is not entitled to a remand to allow it to show that other exemptions justify withholding information where it successfully relies on Exemption 7(A) in the district court, but this claim is no longer tenable because the law investigation was concluded by the time of the appeal.

Cooper Cameron Corp. v. United States Dept. of Labor, 280 F.3d 539 (5th Cir. 2002) (http://caselaw.findlaw.com/us-5th-circuit/1019484.html)

Categorical approach to determining whether documents relating to OSHA investigation is rejected where specific documents at issue do not involve information from confidential sources. The public interest in monitoring how OSHA implements its statutory responsibilities overcomes privacy concerns.

F. Fees & Attorneys Fees

Oil, Chemical and Atomic Workers International Union v. Department of Energy, D.C. Cir. No. 01-5163, May 5, 2002 (http://caselaw.findlaw.com/us-10th-circuit/1421449.html)

In order for plaintiffs in FOIA actions to become eligible for an award of attorney's fees, they must have "been awarded som relief by [a] court," either in a judgment on the merits or in a court-ordered consent decree, applying Buckhannon Bd. & Car Home, Inc. v. West Virginia Dep't of Health & Human Res., 532 U.S, at 603 (2001), to FOIA.

G. Reverse FOIA

Chrysler Corp. v. Brown, 441 U.S. 281 (1979) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/441/281.html)

Neither the FOIA nor the Trade Secrets Act provide a business that wishes to prevent an agency from releasing records wit a private right of action to bring a "reverse-FOIA" action to enjoin agency disclosure. The FOIA exemptions were not intended to mandate non-disclosure. A business may challenge agency decisions to release information under the Administrative Procedure Act, subject to the limitations on judicial review in the APA.

GTE Sylvania, Inc. v. Consumers Union, 445 U.S. 375 (1980) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/445/375.html)

A "reverse-FOIA" action in which a business that submitted records to the agency obtains a permanent injunction against th agency releasing them precludes the agency from releasing the records, even if they do not fall within the FOIA exemptions The agency must comply with the injunction, and records withheld because of such an injunction are not "improperly" withheld under the FOIA.